

USSN 10/643,411

CT-2645-DIV1

Remarks

Status of the claims. Claims 1-10 were pending. Claims 2 and 3 are canceled in this reply. Claims 1-10 were rejected under 35 USC 112, first paragraph for not being enabled. Claims 1-10 were rejected or provisionally rejected under the judicially created doctrine of obviousness.

Rejection under 35 USC 112, first paragraph. The examiner rejected claims 1-10 for not being enabled commensurate in scope with the claims. The applicants complied with the examiner's suggestions and amended the claims.

The variable R⁹ was amended from heteroaryl to pyridine (in the office action the examiner stated "pyrrolidine" not pyridine, but the applicants believe this was a mistake, see example 78, p. 92). The variable R⁶ was amended from 5-membered heteroaryl ring to thiazole as the examiner suggested. The variable X was amended from heteroaryl and non-aromatic heterocyclic ring to pyrrolidine (in place of "saturated pyrrole," example 78, p. 92), methylpyrrolidine (example 80, p. 94), piperidine (as suggested by the examiner), 1,2,4-oxadiazole (in place of "diazole," example 204, p. 209), and tetrazole (as suggested by the examiner).

Additionally, the examiner stated that the specification did not disclose antiviral data for the compounds. The compounds were tested for anti-RSV activity in the described assay and had EC₅₀ values of 0.001- 50 μM (p. 214, lines 25-29).

Rejection for nonstatutory double patenting. The examiner rejected claims 1-10 for nonstatutory double patenting. The table below summarizes the references the examiner used for these rejections.

Reference	Priority date	Claims rejected
US 2003 0207868	12/10/2001	1
US 2002 0099208	12/20/2000	1-10
US 6,489,338 (in view of US 2003 0207868)	1/22/2001	1
US 6,489,338 (in view of US 2003 0207868)	9/27/2000	1, 9, 10

The current application claims priority to US provisional application 60/257,139, filed 12/20/2000. This priority date antedates the priority date for US patent publication 2003 0207868 and disqualifies that reference as prior art. Similarly, US patent publication 2002 0099208 is a divisional of the current application and claims the same priority date. Because these references do not constitute prior art, there is no basis for any of the four rejections based on nonstatutory double patenting. The applicants respectfully request the examiner to withdraw these rejections.

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The applicants believe the application is now in allowable form and respectfully request favorable reconsideration. If any issues remain regarding the allowance of this application, the Examiner is respectfully invited to contact the applicants' agent, James Epperson, by phone (203-677-6974), fax (203-677-6900), or e-mail (james.epperson@bms.com).

Respectfully submitted,

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